

**Introduced by Senator Margett**

February 18, 2005

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An act to add Chapter 6.5 (commencing with Section 12899) to Part 6 of Division 6 of the Water Code, relating to water.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 543, as introduced, Margett. State Water Project: rights-of-way.

(1) Under existing law, the Department of Water Resources operates the State Water Resources Development System (State Water Project).

This bill would establish a permit program, administered by the department, for encroachments on State Water Project rights-of-way. The bill would make any person who makes an alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Resources Development System, without a permit, guilty of a misdemeanor. The bill would provide for civil penalties, and would also make it unlawful for any person to drain water, or permit water to be drained, from the person's lands onto the State Water Resources Development System right-of-way or to obstruct any natural watercourse in a described manner. By creating new crimes, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 6.5 (commencing with Section 12899) is added to Part 6 of Division 6 of the Water Code, to read:

CHAPTER 6.5. STATE WATER RESOURCES DEVELOPMENT  
SYSTEM RIGHTS-OF-WAY

12899. The following definitions govern the construction of this chapter:

(a) “State Water Resources Development System” means the State Water Resources Development System as described in Section 12931, including, but not limited to, all portions of the project authorized pursuant to the Central Valley Project Act (Part 3 (commencing with Section 11100)) and additions thereto.

(b) “Encroachment” means any installation of any tower, pole, pipe, fence, building, structure, object, or improvement of any kind or character that is placed in, on, under, or over any portion of the State Water Resources Development System or other use of the department’s right-of-way, including the alteration of the ground surface elevation by more than one foot, or the planting of trees, vines, or other vegetation that may pose a threat to the physical integrity of any facility of the State Water Resources Development System or that could interfere with the department’s rights with regard to access, inspection, repair, or the operation and maintenance of any State Water Resources Development System facility.

(c) “Person” means any person, firm, partnership, association, corporation, other business entity, nonprofit organization, or governmental entity.

(d) “Right-of-way” means any property interest acquired by the department for State Water Resources Development System purposes, including but not limited to, an easement, license, permit, joint use agreement, or fee ownership.

12899.1. (a) No person shall make any alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Resources Development System, without first obtaining the written permission of the department.

1 (b) Any person proposing to make an alteration, improvement,  
2 encroachment, or excavation within the right-of-way acquired for  
3 the State Water Resources Development System shall submit an  
4 application to the department on a form prescribed by the  
5 department, along with other reports, studies, and analyses as  
6 required by the department.

7 (c) The department may issue a written permit, in accordance  
8 with this chapter, authorizing the permittee to do any act that is  
9 consistent with the convenient execution, functioning, operation,  
10 maintenance, enlargement, and rehabilitation of any portion of  
11 the facilities of the State Water Resources Development System.

12 (d) By issuing the permits, the department is not responsible  
13 for the competence or reliability of the permittee or the  
14 encroachment.

15 (e) The department shall approve or deny an application for an  
16 encroachment permit not later than 60 days from the date of  
17 receipt of the complete application, as determined by the  
18 department. An application for a permit is complete when all  
19 application requirements and other statutory requirements,  
20 including, but not limited to, the California Environmental  
21 Quality Act (Division 13 (commencing with Section 21000) of  
22 the Public Resources Code), have been met. Not later than 30  
23 days from the date on which the application is received, the  
24 department shall determine whether an application is complete. If  
25 the department denies an application for a permit, it shall provide  
26 an explanation of the reason for the denial at the time of  
27 notifying the applicant of the denial.

28 (f) Any person who makes an alteration, improvement,  
29 encroachment, or excavation within the right-of-way acquired for  
30 the State Water Resources Development System, without a  
31 permit, is guilty of a misdemeanor.

32 12899.2. (a) Any act performed under the authority of a  
33 permit issued pursuant to this chapter shall be in accordance with  
34 the applicable provisions of this chapter and the terms and  
35 conditions of the permit.

36 (b) The department may prescribe requirements in the permit,  
37 including a requirement that the permittee pay the entire expense  
38 of restoring the affected State Water Resources Development  
39 System facilities to a condition equivalent to that before the work  
40 was performed, and requirements relating to the location and

1 manner in which the work shall be performed, as determined by  
2 the department to be necessary for the protection of the  
3 department's facilities.

4 (c) Any permit issued to a permittee shall include a provision  
5 that requires the permittee to relocate or remove the  
6 encroachment in the event the future repair, rehabilitation, or  
7 improvement of the State Water Resources Development System  
8 requires the relocation or removal of the encroachment at the sole  
9 expense of the permittee.

10 (d) The department may charge an application processing and  
11 review fee for use of the right-of-way.

12 (e) The department may inspect and supervise the work  
13 performed under any permit issued under this chapter, in which  
14 event the permittee shall pay the reasonable cost of that  
15 inspection and supervision to the department.

16 (f) Before granting a permit under this chapter, the department  
17 may require any applicant to provide proof of insurance naming  
18 the department as an additional insured in an amount reasonably  
19 necessary to protect the state's interest.

20 (g) Before granting a permit under this chapter, the department  
21 may require any applicant, other than a county, city, city and  
22 county, or public agency that is authorized by law to establish  
23 and maintain any works or facilities within the department's  
24 right-of-way, to file with the department a satisfactory bond  
25 payable to the department in an amount that the department  
26 determines to be sufficient, conditioned on the proper compliance  
27 by the permittee with this chapter. The department may require a  
28 bond from a county, city, city and county, or public agency that,  
29 prior to submitting an application, failed to comply with this  
30 chapter or with the conditions of a previous permit.

31 12899.3. No corporation has any franchise rights within the  
32 department's right-of-way, and no county, city, or city and  
33 county has any right to grant a franchise within that right-of-way.  
34 This section does not apply to a State Water Resources  
35 Development System right-of-way located within city, county, or  
36 city and county public roadways.

37 12899.4. The department may delegate, to any entity that has  
38 a contract with the department pursuant to Section 11625, any of  
39 the department's powers, duties and authority, other than  
40 approval, under this chapter as to any facility of the State Water

Resources Development System that primarily benefits that entity, and may withdraw that delegation of authority.

12899.5. (a) If any encroachment exists within the department's right-of-way, the department may require the removal of the encroachment in the manner provided in this section.

(b) Except as provided in subdivision (c), notice shall be given to the owner, occupant, or person in possession of the encroachment, or to any other person causing or permitting the encroachment to exist, by serving a notice including a demand for the immediate removal of the encroachment from within the right-of-way. The notice shall describe the encroachment with reasonable certainty as to its character and location. In lieu of service upon the person, service of the notice may also be made by registered mail and posting for a period of five days, a copy of the notice on the encroachment described in the notice. In the case of an owner, occupant or person in possession, who is not present in the county, the notice may be given to an agent in lieu of service by mailing and posting.

(c) The department may immediately remove from the State Water Resources Development System any right-of-way encroachment that meets the following criteria:

(1) Not later than five days from the date on which a notice was given pursuant to subdivision (b), the owner, occupant, or person in possession of the encroachment has not removed, or commenced to remove in a diligent manner, the encroachment.

(2) The encroachment obstructs, threatens, or prevents the proper operation, maintenance, or rehabilitation of the State Water Resources Development System.

(d) If the department removes any encroachment upon the failure of the owner to comply with the notice pursuant to this section, it may recover the expense of the removal, costs and expenses of suit, including attorneys fees, and, in addition, the sum of five thousand dollars (\$5,000) for each day the encroachment remains after the expiration of the five days from the service of the notice.

(e) If the owner, occupant, or person in possession of the encroachment, or person causing or suffering the encroachment to exist, or the agent of any of these parties, disputes or denies the existence of the encroachment, or refuses to remove or permit

1 the removal of the encroachment, the department may  
2 commence, in any court of competent jurisdiction, an action to  
3 abate the encroachment as a public nuisance. If judgment is  
4 recovered by the department, it may, in addition to having the  
5 encroachment adjudged a nuisance and abated, recover five  
6 thousand dollars (\$5,000) for each day the encroachment remains  
7 after the service of the notice in the manner provided in  
8 subdivision (b), and may also recover the expense of that  
9 removal, and costs and expenses of the suit, including attorneys  
10 fees.

11 12899.6. It is unlawful for any person to do any of the  
12 following acts:

13 (a) Drain water, or permit water to be drained, from the  
14 person's lands onto the State Water Resources Development  
15 System right-of-way by any means, which results in damage to  
16 the system or the department's right-of-way.

17 (b) Obstruct any natural watercourse in a manner that does any  
18 of the following:

19 (1) Prevents, impedes, or restricts the natural flow of waters  
20 from any portion of the department's right-of-way into and  
21 through the watercourse or State Water Resources Development  
22 System cross drainage structures, unless other adequate and  
23 proper drainage is provided.

24 (2) Causes waters to be impounded within the department's  
25 right-of-way that damages the State Water Resources  
26 Development System or the department's right-of-way.

27 (3) Causes interference with, or damages or makes hazardous  
28 the operation, maintenance, and rehabilitation of the State Water  
29 Resources Development System.

30 (c) Stores or distributes water for any purpose so as to permit  
31 it to overflow onto, to saturate by seepage, or to obstruct or  
32 damage any portion of the State Water Resources Development  
33 System or the department's right-of-way.

34 (d) When notice is given by the department, in the manner  
35 provided in Section 12899.5, to any person permitting the  
36 condition to exist, the person shall immediately cease and  
37 discontinue the diversion of waters or shall discontinue and  
38 prevent the drainage, seepage, or overflow and shall repair, or  
39 pay for the repair, of any damage to the State Water Resources  
40 Development System or the department's right-of-way.

1 (e) If any person is notified pursuant to subdivision (d) and  
2 fails, neglects, or refuses to cease and discontinue the diversion,  
3 drainage, seepage, or overflow of the waters or to make or pay  
4 for the repairs, the department may make repairs and perform  
5 work as it determines necessary to prevent the further drainage,  
6 diversion, overflow, or seepage of the waters.

7 (f) The department may recover in an action at law, in any  
8 court of competent jurisdiction, the amount expended for those  
9 repairs and work, and in addition, the sum of five thousand  
10 dollars (\$5,000) for each day the drainage, diversion, overflow,  
11 or seepage of the waters is permitted to continue, after the service  
12 of the notice in the manner specified in this chapter, together  
13 with the costs and expenses, including attorneys fees, incurred in  
14 the action.

15 12899.7. Any person who by any means willfully or  
16 negligently injures or damages any feature of the State Water  
17 Resources Development System or the department's right-of-way  
18 is liable for necessary repairs, and the department may recover in  
19 an action at law the amount expended for the repairs, together  
20 with the costs and expenses, including attorneys fees, incurred in  
21 that action.

22 12899.8. (a) Notwithstanding any other provision of this  
23 chapter, and except as otherwise provided in an agreement  
24 between the department and landowner or  
25 predecessor-in-interest, any person owning a legal real property  
26 interest over a portion of the State Water Resources Development  
27 System right-of-way is not required to obtain a permit from the  
28 department for exercising their property rights, but shall submit  
29 their plans to the department for review and comment before  
30 undertaking any work within the department's right-of-way. A  
31 person's legal real property interests shall be determined by the  
32 appropriate recorded documents. The department shall respond  
33 not later than 60 days from the date of receipt of the plans.

34 (b) Any holder of a current State Water Resources  
35 Development System encroachment permit on January 1, 2007,  
36 may continue the authorized encroachment pursuant to the terms,  
37 conditions, and limitations of that permit.

38 12899.9. The department may adopt rules and regulations to  
39 implement this chapter.

1 SEC. 2. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 the only costs that may be incurred by a local agency or school  
4 district will be incurred because this act creates a new crime or  
5 infraction, eliminates a crime or infraction, or changes the  
6 penalty for a crime or infraction, within the meaning of Section  
7 17556 of the Government Code, or changes the definition of a  
8 crime within the meaning of Section 6 of Article XIII B of the  
9 California Constitution.

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